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No. 99-747

Supreme Court, U.S.
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In the Supreme Court of the United States

HAROLD LEWIS,
Petitioner

v.

KMART CORPORATION,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL BRIEF FOR PETITIONER

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Pursuant to Supreme Court Rule 15.8, petitioner respectfully submits this supplemental brief to call the Court's attention to a new judicial decision that was not available at the time of the party's last filing.

Petitioner's reply brief was filed on January 12, 2000. Among other cases, that brief discussed the Second Circuit's recent decision in *Pallozzi v. Allstate Life Insurance Co.*, No. 98-7552, 1999 U.S. App. LEXIS 31224 (2d Cir. Dec. 1, 1999). *See* Reply Br. 2 n.1. On January 13, 2000—the day after the reply brief was filed in this Court—the Second Circuit issued an amended opinion in *Pallozzi* in response to a petition for rehearing. Pertinent to the case *sub judice*, the Second Circuit's amended opinion states:

> Allstate argues further that our interpretation of the ADA will require federal courts to become deeply involved in questions traditionally left to state regulation, such as whether a differential was actuarially justified. If so, that is because of what Congress has mandated. If Congress had intended to insulate insurance underwriting practices from federal court scrutiny under the ADA, it would have been a very simple matter to say so. Instead, Congress exempted underwriting practices only to the extent that they "are based on or not inconsistent with State law." 42 U.S.C. § 12201(c). This formulation inescapably requires federal courts to determine whether the practice complained of conforms to state law.

Pallozzi v. Allstate Life Ins. Co., Docket No. 98-7552, 2000 U.S. App. LEXIS 589, at *4 (2d Cir. Jan. 13, 2000) (amended opinion).

The Second Circuit's latest opinion bears upon issues discussed in the pending petition in this case (see Pet. 16-21) and the reply brief (at 1-5). Accordingly, this newly issued opinion should be part of this Court's consideration of the need to resolve the disarray among the lower courts on the question whether the ADA requires that any disparity must be supported by actuarial or other non-discriminatory justification.

Respectfully submitted.

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